

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

CERTIFIED TRUE COPY

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The Board's action is framed by the history of this matter. The Board temporarily suspended respondent's license on April 17, 1997, and, by Consent Order, subsequently suspended his license dated September 10, 1997, for five years, nine months active (retroactive to April 17, 1997) based on illegal use of drugs including cocaine. His license was reinstated pursuant to the February 18, 1998 order. Based on respondent's drug history, the Board, to ensure the health, safety, and welfare of the public, authorized respondent's return to practice under certain restrictions. Those restrictions included: twice weekly urine monitoring, continued psychotherapeutic counseling, no ability to prescribe or have access to controlled dangerous substances, and supervised practice. In December 2000, the Board reduced the urine monitoring requirement to six (6) times a month.

At this time, the Board has evidence before it that reflects respondent's compliance with the urine monitoring regime imposed by the Board and with attendance at support groups. His psychotherapist has concluded that respondent need not attend regularly scheduled sessions but that psychotherapist is available to respondent on an as needed basis. Of the nineteen urine screens reviewed, only one had levels of creatinine and specific gravity that would suggest possible adulteration of the specimen. Respondent testified that he has not engaged in the use of any illegal drugs and that the one questioned screen from January 2001

was likely the result of time of day and his coffee consumption. He has been working as a solo practitioner. Because he does not currently have CDS privileges, respondent testified that he generally manages without the need to prescribe, but should it be necessary, another dentist would assist in the case and write the appropriate prescription.

Dr. Canavan testified that the Physician's Health Program evaluates several factors in addition to urine screens in determining whether a participant in that program is at risk or has used illegal substances. Dr. Canavan believes that respondent has exhibited no signs of relapse. He further testified that Dr. Honrychs has been very compliant with all requirements of the program and supported modification of the restrictions imposed by the Board's earlier order. Dr. Canavan requested that the Board permit respondent to regain his ability to write prescriptions for CDS, noting that respondent had not abused those substances.

The Board is persuaded by the information before it that respondent's continued progress in his recovery warrants some modification of the Board's earlier directives. The Board believes that the terms of this order are consistent with the public health, safety, and welfare. The continued requirements will serve to keep the Board apprised of respondent's recovery and will alert the Board to circumstances indicating a relapse. The Board will reduce the urine monitoring requirements to four (4) times per

month. In order to reduce questions related to possibly adulterated specimens, any urine specimen that reflects specific gravity and creatinine levels below certain designated levels will result in an automatic requirement that respondent submit to a hair test for further analysis. Further, the Board will permit reinstatement of respondent's CDS privileges with restrictions set forth below. The Board is continuing requirements for quarterly reports from the Physicians' Health Program and for attendance not less than twice a week at support group meetings.

THEREFORE, IT IS ON THIS 15th DAY OF August, 2001,

ORDERED

1. (a.) Respondent shall submit a urine sample four times a month at a laboratory facility designated by the Board. This requirement shall continue until further order of the Board expressly reducing or discontinuing testing. Respondent shall be provided with specific directions for the protocol of the testing procedure and the location of the laboratory facility by the Executive Director of the Board. The urine monitoring shall be conducted with direct witnessing of the taking of the samples as designed by the laboratory facility. The initial drug screen shall utilize appropriate screening techniques and all confirming tests and/or secondary tests will be performed by gas/chromatography/mass spectrometry (G.C./M.S.). The testing procedure shall include a

forensic chain of custody protocol to ensure sample integrity and to provide documentation in the event of a legal challenge.

(b.) All test results, including any hair sample analysis done, shall be provided to Kevin B. Earle, Executive Director of the Board, or his designee in the event he is unavailable. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guarantee the accuracy and reliability of the testing.

(c.) Any failure by respondent to submit or provide a urine sample within twenty-four (24) hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event respondent is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Kevin B. Earle, or his designee. Personnel at the lab facility shall not be authorized to waive a urine test. In addition, respondent must provide the Board with written substantiation of his inability to appear for a test within two (2) days, e.g., a physician's report attesting that respondent was so ill that he was unable to provide the urine sample or appear for the test. "Impossibility" as employed in this provision shall mean an obstacle beyond the control of respondent that is so insurmountable or that makes

appearance for the test or provision of the urine sample so infeasible that a reasonable person would not withhold consent to waive the test on that day.

(d.) In the event respondent will be out of the State for any reason, the Board shall be so advised so that arrangements may be made at the Board's discretion for alternate testing. The Board may, in its sole discretion, modify the frequency of testing or method of testing during the monitoring period.

(e.) Any urine test result showing creatinine levels below 20 mg/dL and a specific gravity below 1.009 shall be deemed a confirmed positive urine test. In such event, respondent shall submit a hair sample for analysis to determine the presence of any improper substance(s).

(f.) Respondent shall familiarize himself with all foods, food additives or other products (such as poppy seeds) which may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances. Respondent specifically agrees that ingestion of such substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program.

2. Respondent shall attend support groups, including NA or AA not less than two (2) times per week. Respondent shall provide evidence of attendance at such groups directly to the Board. If respondent has discontinued attendance at any of the

support groups without obtaining approval of the Board, he shall be deemed in violation of this Order.

3. Respondent shall not possess any controlled dangerous substances except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause in his own treatment. In addition, respondent shall advise any and all treating physicians and/or dentists of his history of substance abuse. Respondent shall cause any physician or dentist who prescribes medication which is a controlled dangerous substance to provide a written report to the Board together with patient records indicating the need for such medication. Such report shall be provided to the Board no later than two (2) days subsequent to the prescription in order to avoid confusion which may be caused by a confirmed positive urine test as a result of such medication.

4. Respondent may obtain his CDS registration from the Drug Control Unit of the Division of Consumer Affairs. Respondent shall use sequentially numbered, triplicate prescription pads for each prescription written for CDS and shall provide one copy to the patient, place one copy in the patient's record, and submit one copy to the Board with a copy of the patient record indicating the name of the patient and the condition for which the prescription was written. Submissions to the Board shall be made on a quarterly basis, with the first quarterly report due on November 1, 2001. Respondent shall not maintain any CDS in his office.

5. Respondent shall provide any and all releases to any and all parties who are participating in the monitoring, treating or other program as outlined in this order, as may be required in order that all reports, records, and other pertinent information may be provided to the Board in a timely manner. With regard to any requirement for submission of the quarterly reports to the Board, the beginning of the first quarter is deemed to have commenced August 1, 2001.

6. (a) Respondent shall be subject to an order of automatic suspension of license upon the Board's receipt of any information which the Board, in its sole discretion, deems reliable demonstrating that respondent has failed to comply with any of the conditions set forth in this consent order, including but not limited to report of a confirmed positive urine, or a prima facie showing of a relapse or recurrence of alcohol or drug abuse.

(b) Respondent shall have a right to apply for removal of the automatic suspension on ten (10) days notice to the Board and to the Attorney General. The Board may hold a hearing on that application before the full Board or before a committee of the Board. In the event a committee hears the application, its action shall be subject to ratification of the full Board at its next scheduled meeting. In a hearing seeking removal of the automatic suspension, any confirmed positive urine shall be presumed valid.

8. Respondent may apply for modification of the terms of this order not sooner than one year following its entry. Prior to considering modification of the terms of the order, the Board may require respondent to submit to an independent psychiatric or other medical examination and have the results of that examination provided to the Board.

New Jersey Board of Dentistry

By: Barbara Ann Rich, DDS
Barbara A. Rich, D.D.S.
President